Endangered Species Act
April 2005

Americans of all faiths have long recognized their duty to protect animals and plants and the places species call home; this is the purpose of the Endangered Species Act. If there is intelligent design or a plan to God's work, human beings are to conserve the fabric God has woven so that future generations may witness the beauty created.

Since enactment in 1973, the Endangered Species Act has been amended eight times. Meanwhile, the Congress has continued to provide appropriations to keep the endangered species programs running at the Department of the Interior's Fish and Wildlife Service (Service) for terrestrial and freshwater species, and Department of Commerce (NOAA-Fisheries) for marine and anadromous fish species.

Reauthorization legislation will likely be considered in the 109th Congress. Critics maintain the law needs to be *reformed, modernized* and *updated*; these are code words to undermine this law which is the court of last resort for species on the brink of extinction. The law's purpose is to take emergency actions at the last moment when other Federal, State and local laws have failed to conserve species.

Has the Endangered Species Act Prevented Extinctions?

Endangered Species Act critics argue that the test of the law's success should be measured only by the number of species which have recovered. These include the American Alligator, American Peregrine Falcon, and Gray Whale. Using the numbers of recovered species to measure success omits all the species which probably would have been lost if the law had not been enacted, such as the Bald Eagle and Whooping Crane.

Without the Endangered Species Act, the rate of extinctions would have been dramatically higher.[1] Had these endangered plants and animals vanished from the earth, the damage to God's fabric would have been extensive.

Today there are 1,264 U.S. species listed as endangered or threatened. Conservation actions required by the Endangered Species Act have successfully prevented 99 percent of listed species from becoming extinct.[2] "The numbers are encouraging, especially given the large number of highly imperiled species that have been listed in the past decade, "writes the Department of Commerce in its most recent *Biennial Report to Congress on the Recovery Program for Threatened and Endangered Species*, October 1, 2000 - September 30, 2002.

Why Should We Care About Endangered Species?

For more than 2,000 years, humans have developed foods, medicines, and essential materials from plants and animals. Nearly 50 percent of all medical prescriptions dispensed annually in the United States are derived from nature or synthesized to mimic naturally occurring chemical compounds. With the extinction of a single species, gone may be the next effective treatment for cancer, AIDS, or other diseases.[3]

It was the cultivation of mold fungus that led to the development of penicillin about 50 years ago. Before the development of modern antibiotics soldiers were more likely to die in the trenches from common infections than from enemy fire.

Morphine and codeine, both produced from poppy plants, remain among the most widely used analgesics in medicine today. Venoms from snakes have led to important medications, including the blood pressure drug captopril.[4] Even insects have their value in medicine. "One of the very interesting things about biology is that the genes that turn on to form a heart in a fruit fly have evolved and are actually the same genes that form hearts in higher animals and people," according to an article recently published in the *Washington Times*[5].

Aside from their medicinal value, plants are also important food sources. It has been estimated that there are 80,000 species of edible plants, of which fewer than 20 produce 90 percent of the world's foods. As Pulitzer Prizewinning biologist E.O. Wilson points out, if we allow species to become extinct, still undeveloped medicines, crops, pharmaceuticals, timber fibers, pulp, soil-restoring vegetation, petroleum substitutes and other products will never come to light.[6]

How Have Federal Agencies Implemented the Law?

One of the serious hurdles to species conservation comes not from the law itself, but from the lackluster support it has received from Federal agencies. Since 1978, the Endangered Species Act has required all listed species to have critical habitat designations[7] and recovery plans, but only 38 percent do.[8] Just three years ago, only 152 of the 1,256 U.S. listed species had a critical habitat designation.[9] A decade ago, nearly half of listed species had no recovery plan in place at all.[10]

Whenever a proposed Federal agency action may impact a listed species or its critical habitat, the action agency is required by Section 7 to enter into consultations with the Service or NOAA-Fisheries to ensure that the proposed action will not jeopardize a species existence or adversely modify its critical habitat. In all but two of the 13,000 projects requiring formal consultations from 1996-2003, the Service was able to work with the project proponent to develop reasonable and prudent alternatives and allow the projects to go forward.[11] The vast majority of human activities that require a consultation with the Service proceed with little or no modification.[12]

Four court decisions since 2001 have said that the Service's regulatory definition of *destruction or adverse modification* of critical habitat is illegal, and two General Accountability Office reports have recommended the Service develop critical habitat guidance for its land managers. But the agency still has not developed such guidance.[13]

Interior Assistant Secretary Craig Manson told the House Resources Committee on April 28, 2004 that he would soon finalize critical habitat guidance. Despite his testimony and the GAO recommendations, the guidance was never issued. These are not shortcomings of the law, but examples of the agency's implementation of the law.

<u>How Has Funding Affected the Law's Effectiveness?</u>

In 2003, the Fish and Wildlife Service said that approximately $153 million would be needed to address the current backlog of listing and critical habitat obligations."[14] Yet, the President's Fiscal Year 2006 budget request is just $18.1 million for listings and critical habitat designations. Significant additional resources are needed to address the backlog of 284 candidate species eligible for listing, 790 species without a critical habitat designation, and 232 listed species without recovery plans.[15]

Nationwide, there is an increased interest in completing additional habitat conservation plans, which enable development to proceed in tandem with species conservation. In 1999, habitat conservation plans covered 6 million acres; today there are more than 40 million acres within habitat conservation plans, and 280 habitat conservation plans are awaiting approval.

Yet the budget for Consultation/Habitat Conservation Planning is not keeping pace with the nation's demands. Developers from West Virginia[16] to California [17] are complaining that they are trying to develop habitat conservation plans and obtain approvals from the Service but the agency is so understaffed that answers are elusive, resulting in delay and increased project costs.

How Do the Agencies Incorporate *Sound Science* in Endangered Species Act Decisions?

The Endangered Species Act requires the Service and NOAA-Fisheries to rely on the *best scientific and commercial data available* when making species listing decisions, developing recovery plans, and evaluating whether endangered or threatened species will be affected by a Federal action. For critical habitat designations, the agencies are to use the *best scientific data available*.

The Service has an established policy to solicit the opinion of three independent specialists for all listing proposals and critical habitat designations, and requests independent peer review during the development of recovery plans. The Service also attempts to incorporate independent peer review of all actions associated with listings, critical habitat designations, recovery planning, and Section 10 permits.[18] The GAO found that the Service's peer review policy is "appropriate for the circumstances in which it is used."[19]

Legislation reported last year by the House Resources Committee would have changed that and undermined species protections by requiring the Secretary to give greater weight to empirical data than to models. In testimony presented by NOAA-Fisheries Director William Hogarth he said, ". . . we would not want to diminish the use of models of populations, habitat use and/or life histories, which frequently do represent the best available science and are based on field-collected data."[20]

Conclusion

The Endangered Species Act has dramatically reduced the rate of species extinction. Meanwhile, nature continues to work as fast as it can, against the odds to return species to healthy population levels. As the Congress considers legislation, only those amendments that promote species recovery merit approval. To do anything else would be to unravel the cloth God has woven for future generations to understand and appreciate. It is our duty as citizens of God's world to honor the plant and animal kingdom God created.

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1. National Research Council. *Science and the Endangered Species Act*,Washington, D.C.: National Academy Press, 1995.

2. "Why Save Endangered Species?" an undated posting on the Fish and Wildlife Service's website at www.fws.gov.

3. Ibid.

4. Weiss, Rick. "Venom as a Prelude to New Drug Treatments," *Washington Post*, 7 March, 2005: A8.

5. Vorenberg, Sue. "Fly's genes hearten researchers," *Washington Times*, 14 March, 2005: A6.

6. Wilson, Edward O. *The Diversity of Life*. New York: W.W. Norton & Company, Inc.,1999.

7. Critical habitat is an area that includes important constituent elements for species, such as places for birds to nest and feed.

8. U.S. Fish and Wildlife Service, Materials Provided to the Committee, March 24, 2005.

9. U.S. Fish and Wildlife Service, "Critical Habitat for Alabama Sturgeon,"May 2, 2000.

10. U.S. Fish and Wildlife Service, *Recovery Report to Congress*: *Fiscal Years 2001-2002*: 8.

11. Chapman, Tom, Fish and Wildlife Service. Letter to the Committee. 2 April, 2004.

12. "Critical Habitat for Alabama Sturgeon, " U.S. Fish and Wildlife Service, May 2, 2000

13. United States General Accounting Office, *Endangered Species: Fish and Wildlife Service Uses Best Available Science to Make Listing Decisions, but Additional Guidance Needed for Critical Habitat Designations*, GAO-03-803 (Washington, DC: August 2003) and U.S. General Accounting Office, *Endangered Species Program: Information on How Funds are Allocated and What Activities are Emphasized*, GAO-02-581 (Washington, D.C.: June 25, 2002).

14. U.S. District Court for the District of Montana, Civil No. 02-00163-MDWM. *Defendant's Responses to Plaintiff's Second Set of Interrogations and Requests for Production of Documents*. Plaintiffs: Defenders of Wildlife, Predator Conservation Alliance, Friends of hte Clearwater, Superior Wilderness Action Network, Klamath-Siskiyou Wildlands Center and Northwest Ecosystem v. Defendants: Gale Norton and Steven A. Williams.

15. Email from Fish and Wildlife Service to Resources Committee staff, January 28, 2005.

16. Rahall, Congressman Nick J. Letter to Chairman Charles Taylor and Ranking Democrat Norm Dicks. 3 March, 2004.

17. Doolittle, Congressman John. Statement before the House Appropriations Subcommittee on Interior, Environment and Related Agencies, March 9, 2005.

18. Lyder, Jane, Department of the Interior. Letter to Honorable Greg Walden, 24 February, 2005.

19. United States General Accounting Office, *Endangered Species: Fish and Wildlife Service Uses Best Available Science to Make Listing Decisions, but Additional Guidance Needed for Critical Habitat Designations*, GAO-03-803 (Washington, DC: August 2003), page 15.

20. Hogarth, William, Director of National Oceanic and Atmospheric Administration-Fisheries. Testimony on H.R. 4840, June 19, 2002.